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The opinion in support of the decision being entered today was **not** written for publication
and is **not** binding precedent of the Board.

Paper No. 25

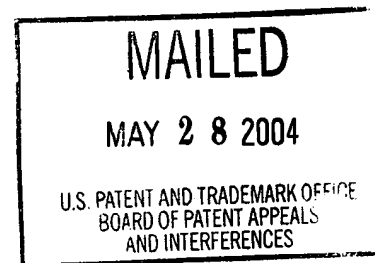
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RABAH S. HAMDİ and EDWARD E. OLKKOLA

Appeal No. 2002-1516
Application No. 09/052,744

ON BRIEF



Before BARRETT, DIXON, and LEVY, **Administrative Patent Judges**.

DIXON, **Administrative Patent Judge**.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-4, 6-8, 10, 11, 14, 17, 18, 23, and 24. Claims 12, 13, 15, 16, and 19-22 have been objected to by the examiner and would be allowable if rewritten in independent form.

We **AFFIRM-IN-PART**.

Appellants' invention relates to a wireless universal serial bus link for a computer system. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. A computer system comprising:
 - a computer including at least an upstream USB port;
 - a peripheral hub device including at least a USB host port;
 - a first transceiver coupled to the upstream USB port of said computer; and
 - a second transceiver coupled to the USB host port of said peripheral hub device, said first and second transceivers cooperate to form a wireless USB bus link between said computer and said peripheral hub device.

The prior art of record relied upon by the examiner in rejecting the appealed claims is as follows:

Burnett et al. (Burnett)

5,870,080

Feb. 9, 1999

Claims 1-4, 6-11, 14, 17, 18, 23, and 24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Burnett.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellants regarding the above-noted rejections, we make reference to the examiner's answer (Paper No. 22, mailed Jun. 5, 2001) for the examiner's reasoning in support of

the rejections, and to appellants' brief (Paper No. 20, filed Mar. 26, 2001) and reply brief (Paper No. 23, filed Aug. 3, 2001) for appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art reference, and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we make the determinations which follow.

At the outset, we note that appellants have elected to group all the claims as standing or falling together in a single group. (See brief at page 3.) Yet, appellants have provided arguments to independent claims 1 and 23 together and a separate argument for independent claim 17. From our review of independent claim 17, we find this claim to be the broadest claim, but will address it second since appellants essentially rely on the arguments made with respect to independent claims 1 and 23 for independent claim 17.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness. **See In re Rijckaert**, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A *prima facie* case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to

make the proposed combination or other modification. **See In re Lintner**, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Furthermore, the conclusion that the claimed subject matter is *prima facie* obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. **See In re Fine**, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Rejections based on § 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. **See In re Warner**, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), **cert. denied**, 389 U.S. 1057 (1968). Our reviewing court has repeatedly cautioned against employing hindsight by using the appellant's disclosure as a blueprint to reconstruct the claimed invention from the isolated teachings of the prior art. **See, e.g., Grain Processing Corp. v. American Maize-Prods. Co.**, 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988).

When determining obviousness, "the [E]xaminer can satisfy the burden of showing obviousness of the combination 'only by showing some objective teaching in

the prior art or that knowledge generally available to one of ordinary skill in art would lead that individual to combine the relevant teachings of the references.'" **In re Lee**, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002), citing **In re Fritch**, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). "Broad conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence.'" **In re Dembiczak**, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). "Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact." **Dembiczak**, 175 F.3d at 999, 50 USPQ2d at 1617, citing **McElmurry v. Arkansas Power & Light Co.**, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993) .

Further, as pointed out by our reviewing court, we must first determine the scope of the claim. "[T]he name of the game is the claim." **In re Hiniker Co.**, 150 F.3d 1362,1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). Therefore, we look to the limitations set forth in independent claim 1. Here, we find that claim 1 specifically sets forth an interrelationship of a computer and a peripheral hub device and transceivers to form a wireless USB bus link.

Appellants argue that Burnett does not teach a peripheral hub device with first and second transceivers which cooperate to form a wireless USB bus link between said computer and said peripheral hub device. (See brief at pages 4-5.) Further, appellants

argue that Burnett fails to disclose a peripheral hub device including at least a host port. We agree with appellants. The examiner maintains that the teaching of Burnett with respect to "using a printer, the use of other similarly equipped peripheral devices will be apparent to those skilled in the art" would have taught or suggested the usage of any type of USB peripheral devices including the claimed peripheral hub device to house the second transceiver because the claimed peripheral hub device is a well-known USB peripheral device. (See answer at page 4 and Burnett at column 4, lines 63-65.)

While we agree with the examiner that peripheral hubs were known, we find no teaching, motivation or suggestion to substitute a peripheral hub in the wireless communication system as taught by Burnett. We find the teaching in Burnett to merely be an invitation for other substitutions which we find insufficient alone to suggest the use of a USB hub for additional connections to the USB port via a wireless connection taught by Burnett.

Additionally, we note that Burnett does mention the use of a USB "hub" at column 3, line 19, but this teaching appears to be merely a USB port as recited in appellants' claimed and disclosed invention. Furthermore, from our review of Burnett with respect to the disclosure of the "hub," the respective interconnections of the transceivers are not in the appropriate locations with respect to the hub and ports, therefore we cannot find that the "hub" disclosed in Burnett would have taught or

suggested the invention as claimed nor can we find that the examiner's reliance upon the teaching of similarly equipped peripheral devices alone would have suggested substitution of a peripheral hub for the printer of Burnett. Therefore, we find that the examiner has not established a ***prima facie*** case of obviousness of the claimed invention, and we cannot sustain the rejection of independent claims 1 and 23 and their dependent claims.

With respect to independent claim 17, we note that this independent claim does not contain a similar limitation with a peripheral hub connected to a transceiver pair to communicate with a computer. Independent claim 17 recites:

17. A radio frequency transceiver apparatus for providing a wireless USB bus, said transceiver apparatus comprising:

a USB connector for connecting to a hosting device;

a USB interface electrically connected to said USB connector;

a radio frequency transceiver electrically connected to said USB interface, said transceiver transmits and receives radio frequency signals;
and

an antenna operatively connected to said transceiver.

Appellants rely upon the arguments above with respect to a USB hub and appellants argue that Burnett fails to appreciate the need for a wireless USB bus that operates transparently in the USB system and does not require host controller circuitry and does not operate as a USB device. (See brief at page 6.) We disagree with appellants and

do not find support in the express language of independent claim 17 for these arguments.


From our review of Figure 4 of Burnett, we agree with the examiner that Burnett teaches and fairly suggests the invention as claimed. Specifically, Burnett teaches a USB port/connector 111 for connecting to a hosting device (computer 100 with data bus 101). Burnett teaches a USB interface (either cable 126 or mouse 120) electrically connected to the USB connector. Burnett teaches that the mouse 120 contains pointing device 133 and transceiver 131 and an EM emitter/sensor mounted on the exterior of the mouse. In the RF embodiment as claimed in Burnett claim 4 there would have been an antenna operatively coupled to the transceiver. Therefore, we find that Burnett teaches the invention as recited in appellants' independent claim 17. A claim that is anticipated by a reference is also obvious under 35 U.S.C. § 103, since "anticipation is the epitome of obviousness." **See, e.g., Connell v. Sears, Roebuck & Co.**, 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983); **In re Fracalossi**, 681 F.2d 792, 794, 215 USPQ 569, 571 (CCPA 1982); **In re Pearson**, 494 F.2d 1399, 1402, 181 USPQ 641, 644 (CCPA 1974). Therefore, we will sustain the rejection of independent claim 17 and its dependent claim 18.

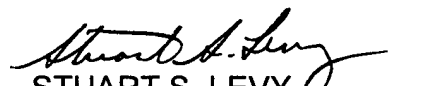
CONCLUSION

To summarize, the decision of the examiner to reject claims 1-4, 6-11, 14, 23, and 24 under 35 U.S.C. § 103 is reversed, and the decision of the examiner to reject claims 17 and 18 under 35 U.S.C. § 103 is affirmed.

AFFIRMED-IN-PART


LEE E. BARRETT
Administrative Patent Judge


JOSEPH L. DIXON
Administrative Patent Judge


STUART S. LEVY
Administrative Patent Judge

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